

FOR IMMEDIATE RELEASE
Wednesday, October 3, 2007

R-2635
202/273-1991
www.nlrb.gov

**NLRB FINDS THAT AN EMPLOYER'S VOLUNTARY RECOGNITION
OF A UNION DOES NOT BAR A DECERTIFICATION OR RIVAL UNION
PETITION FILED DURING A 45-DAY PERIOD FOLLOWING RECOGNITION**

In *Dana Corp.*, 351 NLRB No 28 (September 29, 2007), the National Labor Relations Board, in a 3-2 decision, modified its recognition-bar doctrine, and held that an employer's voluntary recognition of a labor organization does not bar a decertification or rival union petition that is filed within 45 days of the notice of recognition.

In deciding this case the Board considered the positions of the parties and well as amicus submissions from various companies, organizations, and individuals, as well as Members of the U.S. Senate and U.S. House of Representatives.

Under its former policy, established in *Keller Plastics Eastern, Inc.*, 157 NLRB 583 (1966), an employer's voluntary recognition of a union, based on a showing of the union's majority status, barred a decertification petition filed by employees or a rival union's petition for a reasonable period of time. The Board had reasoned that labor-relations stability was promoted by a rule under which a voluntarily recognized union was insulated from challenge to its status while negotiating for a first collective-bargaining agreement.

In *Dana*, the Board majority of Chairman Battista and Members Schaumber and Kirsanow concluded that although the basic justifications for providing an insulated period are sound, they do not warrant *immediate* imposition of an election bar following voluntary recognition. The Board held that the uncertainty surrounding voluntary recognition based on an authorization card majority, as opposed to union certification after a Board election, justifies delaying the election bar for a brief period during which unit employees can decide whether they prefer a Board-conducted election. Under the Board's new policy, an employee or rival union may file a petition during a 45-day period following notice that a union has been voluntarily recognized. The petition will be processed if, like other petitions, it is supported by 30 percent of the bargaining unit. The Board will apply this modified procedure prospectively only.

In dissent, Members Liebman and Walsh stated that nothing in the majority's decision justifies its radical departure from the longstanding and judicially approved procedure first announced in *Keller Plastics*. The dissent maintains that voluntary recognition is a favored element of national labor policy, yet the majority relegates it to disfavored status by allowing a minority of employees, the number needed to file a decertification petition, to disrupt the bargaining process just as it is getting started. This, the dissent contends, will discourage voluntary recognition altogether.

###